

Civil Action No: CV11-0336 (DLI)(MDG)

**PLAINTIFF CALICO COTTAGE, INC.'S OBJECTIONS PURSUANT TO FED. R. CIV.
P. 72(a) TO MAGISTRATE JUDGE'S ORDER ENTERED SEPTEMBER 23, 2011**

Exhibit A

Agreement of Non-Disclosure, Non-Use and Non-Competition

This Agreement is between Calico Cottage, Inc., a New York Corporation having an address at 210 New Highway, Amityville, NY 11701-1116 (Calico) and TNB, Inc. (d/b/a The Nutty Bavarian), a Florida Corporation having an address at 305 Hickman Drive, Sanford, FL 32771 (Nutty Bavarian).

WHEREAS, Calico is in the business of providing to retailers: (i) fudge making equipment, fudge making ingredients and finished fudge that enables retailers to sell fudge to consumers and (ii) make-at-home mixes that are sold by retailers to consumers ("Calico Business").

WHEREAS, Nutty Bavarian is in the business of providing to retailers: (i) nut roasting and glazing equipment and ingredients for roasting and glazing nuts that enables retailers to sell roasted and glazed nuts to consumers, and (ii) glazed nuts in bulk and prepackaged glazed nuts that are sold by retailers to consumers ("Nutty Bavarian Business").

WHEREAS, Calico and Nutty Bavarian are interested in entering into discussions in contemplation of a possible purchase by Calico of all or a portion of said Nutty Bavarian Business ("Business Purpose"), and

WHEREAS, the parties require disclosure of various confidential information, including information of a technical nature and of an accounting nature, to evaluate the possible purchase and the term thereof;

NOW, THEREFORE, the parties agree as follows:

1. Definition of Confidential Information.

"Confidential Information" means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to accounting, sales and business information as well as any information concerning product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, business plans, agreements with third parties, services, customers, marketing and finances. Confidential Information is to be designated in writing to be confidential or proprietary, or if given orally, is confirmed in writing as having been disclosed as confidential or proprietary within a reasonable time (not to exceed thirty (30) days) after the oral disclosure.

2. Non-Disclosure and Non-Use of Confidential Information.

(a) The parties each agree not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than that related to said Business Purpose. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than individuals who are required to receive the information in order to further the Business Purpose. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from

falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

(b) **Staff Notification.** Each party agrees to provide the other party with a list identifying (by at least name, title and reason for receipt of information) each individual who has or will be given confidential information of the other party and will accompany the list with a warranty that the listed individuals have been apprised of this Agreement and have agreed to abide by the provisions herein including those concerning non-disclosure, non-use and non-competition. This list will be updated on a monthly basis.

(c) **Exceptions.** Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;

(ii) was known to the receiving party, without restriction, at the time of disclosure;

(iii) is disclosed with the prior written approval of the disclosing party;

(iv) was independently developed by the receiving party without any use of the Confidential Information of the disclosing party;

(v) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;

(vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

3. **Non-Solicitation.**

(a) During the term of this Agreement the parties shall not, directly or indirectly:

(i) Employ or seek to employ any employee of the other party.

(ii) Attempt to reduce or eliminate the current business relationship of the other party with any of the other party's customers.

(b) For a period of one year from the effective date the parties shall not, directly or indirectly:

(i) Engage the services or seek to engage the services of any representative of the other party without the express written consent of the other party.

(ii) Attempt to solicit or sell products and services to a customer doing business with the other party by utilizing an employee or representative of the other party.

4. **Non-Competition.** Each party agrees to refrain from entering into the business of the other party, said business being set above as Calico Business and Nutty Bavarian Business. The parties understand that any signed written agreement between the parties relating to said Business Purpose may in part supersede this Non-Competition Agreement.

5. **Term.** Except as otherwise specified in this Agreement, the requirements of and obligations under this Agreement shall continue for a period of five (5) years from the effective date of this Agreement.

6. **Governing Law.** The laws of the State of New York shall apply to the construction and enforcement of this Agreement.

7. **Succession.** This Agreement will inure to the benefit of and be binding upon the parties and their successors and assigns.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the matters covered herein. This Agreement may be amended only by a written agreement signed by an authorized officer of each party.

9. **Injunctive Relief.** The parties understand and agree that unauthorized disclosure, use or competitive business activity in violation of the terms of this Agreement will result in irreparable injury and that injunctive relief is appropriate to remedy such injury.

10. **Effective Date.** This Agreement shall be effective upon execution by both parties.

Calico Cottage, Inc.

by 

Mark Wurzel, President

Date: 1/30/2007

TNB, Inc.

by 

David Brent, President

Date: 22 Jan 2007